TWO HUNDRED AND TWENTY FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1984-85)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES—RELATED PERSON

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken on 158th Report (Seventh Lok Sabha)]

Presented in Lok Sabha on *24 August 1984*
Laid in Rajya Sabha on *24 August 1984*

LOK SABHA SECRETARIAT
NEW DELHI

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(1984-85)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf, this Two Hundred and Twenty-Fifth Report on Action Taken by Government on the recommendations contained in their 158th Report (7th Lok Sabha) on Union Excise Duties—Related Person.

2. In their earlier Report, the Committee had pointed out that although the Classification and Valuation Cells were set up in the various Collectorates in the year 1971, they had checked only small number of price/classifications lists over the years 1976-77 to 1981-82 and the number of cases in which duty was recovered as a result of rectification suggested by the Cells was quite negligible. The Committee had expressed distress over the fact that the Valuation Cells were not taking important cases and were not checking by making visits to monopoly houses and units selling to related persons etc. Although mistakes were noticed in about 12,775 lists, duty was recovered in approximately 618 cases in all. The action taken reply of the Ministry is silent on the point as to why out of 12,775 lists in which mistakes were noticed, duty has been recovered in 618 cases only. Not does it indicate the steps taken by the Department to recover duty in the remaining cases. The said reply is also sailent about the steps taken by the Valuation Cells for taking up important cases and checking the lists. The Committee have desired that specific action taken in the above directions should be intimated to them within a period of three months.

3. In their earlier Report, the Committee had also pointed out that although Classification and Valuation Cells in the various Collectorates were required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related persons' and undervaluation of sale prices during the last 5 years, such studies were conducted only in 6 Collectorates. In their Action Taken Note the Ministry have stated that such studies were conducted in certain other Collectorates as well but the same could not be undertaken in a systematic manner for lack of resources. The Committee are not satisfied with the plea of "lack of resources" and have expressed the view that if these studies were conducted in a regular and systematic manner, it would have been possible for the Cells to detect a

large number of cases of under-valuation of sales to "Related Persons" and the consequent evasion of excise duty. The Committee have recommended that suitable methodology should be evolved so as to ensure that systematic and regular studies are conducted by the Valuation Cells of the various Collectorates according to well laid out schedules.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 7.8.1984. Minutes of the sitting form Part II of the Report.

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form Appendix to the Report.

6. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the office of the C & AG of India.

NEW DELHI
August 13, 1984
Sravana 22, 1906 (S)

SUNIL MAITRA
Chairman
Public Accounts Committee

CHAPTER I

REPORT

1.1 This Report deals with the action taken by Government on the recommendations of the Public Accounts Committee (1982-83) contained in their 158th Report (Seventh Lok Sabha) on paragraph 2.63 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes.

1.2 The 158th Report, which was presented to Lok Sabha on the 29th April, 1983, contained 12 recommendations/observations. Action Taken Notes in respect of all the recommendations/observations have been received from Government. These have been broadly categorised as follows :

(i) Recommendations/observations which have been accepted by Government.

S. Nos. 1, 2, 6, 7, 10 and 11.

(ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government.

S. No. 3 and 5.

(iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration.

S. Nos. 4,8 and 9.

(iv) Recommendations/observations in respect of which Government have furnished interim replies.

S. No. 12.

1.3 In para 1.43 of their 158th Report, the Committee had observed that it was a matter of common knowledge that a large number of manufacturers were passing on goods to their relations for sale on agency basis, thereby avoiding excise duty. The Committee had, therefore, desired that the matter should be examined systematically

and regularly by competent officers entrusted wholly with such task so as to detect such cases and initiate deterrent penal action. In their action taken reply submitted in March, 1984, the Ministry have simply stated "the matter is under examination". The Committee are unhappy at this vague reply of the Ministry. It is surprising that it has not been possible for the Ministry to examine the matter and take concrete steps in pursuance of the recommendation of the Committee even though a period of nearly a year and a quarter has elapsed since the Committee had presented their Report to the House. The Committee desire that the matter should be examined with utmost expedition and the precise action taken in pursuance of their recommendation intimated to them within a period of three months.

1.4 The Committee will now deal with the replies furnished in respect of some of the recommendations.

Valuation of goods for purposes of levy of excise duty

(Paragraph 1.35—S. No. 4)

1.5 Dealing with the clarifications issued by the Central Board of Excise and Customs in regard to valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises and Salt Act, 1944, the Committee in paragraph 1.35 of their 158th Report had observed as follows:

> "The Committee are surprised to find that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in August, 1975 and 4 March, 1977 on valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises and Salt Act, 1944. To a pointed query by the Committee whether the Board was kept apprised by the Internal Audit wing or Directorate of Inspection and Audit in regard to the interpretation of the aforesaid clarifications, the Committee have been furnished with a vague reply that "ordinarily the clarifications issued by the Board are to kept in view by the field officers and that the Internal Audit Parties of the Collectorates are expected in the course of inspection of excisable units *inter alia* to look into whether the various instructions/clarifications issued by the Government or the Board are being correctly applied by the Range staff". Even though the clarifications issued are quite exhaustive and detailed the Committee consider it necessary that the Board develops a system of obtaining regular feed

back from the field so that the law is applied uniformly in all the Collectorates and it is ensured that the provisions of law with regard to "related person" are effectively utilised to bring to book cases of undervaluation. The Committee would like to be apprised of the steps taken by the Board in this regard."

1 6 In their Action Taken Note dated 30.3.84, the Ministry of Finance (Department of Revenue) have intimated as under :

"As already explained, it is the duty of the Internal Audit Parties during Inspection of excisable units *inter alia* to look into whether various instructions/clarifications issued by the Govt. or the Board are being applied by the Range Staff.

Some of such important objections relating to non-compliance with Board's clarifications are also included in the All India Audit Bulletin issued by the Directorate of Audit each quarter so that all formations are suitably alerted".

1.7 In their earlier Report, the Committee had pointed out that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in August 1975 and 4 March 1977 on valuations of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises & Salt Act, 1944. The Committee had recommended that the Board should develop a system whereby regular feed-back is obtained from the field so that the law is applied uniformly in all the Collectorates to ensure that the provisions of law with regard to "related person" are effectively utilised to bring to book cases of undervaluation. In their Action Taken Note the Ministry have not furnished any details of action taken in pursuance of the Committee's recommendation but have only repeated their earlier reply "that it is the duty of the Internal Audit Parties during inspection of excisable units inter alia to look into whether various instructions clarifications are applied by the Range Staff." The Committee are not satisfied with this reply. It is apparant that the existing procedure has not enabled the Board to oversee that the clarifications issued by them are applied uniformly by all the Collectorates and it was in this context that the Committee had desired the Board to develop a system whereby regular feedback was obtained from the field so that the law was applied uniformly by all the Collectorates. The Committee would, like the Central Board of Excise and Customs to indicate precise action taken in this regard.

Study by Classification and Valuation Cells

(Paragraphs 1.39 and 1.40—S. Nos. 8 & 9)

1.8 Referring to the studies conducted by the Classification and Valuation Cells *inter-alia* in regard to the appointment of sole-selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine "related person" and undervaluation, the Committee in paragraphs 1 39 and 1 40 of their 158th Report had recommended as under :

Para 1.39

The Committee find that the classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain varacity of prices in respect of important industries with sizeable volume of transactions, or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units will be undertaken by visit to the factories by the Cell satff. These cells have now been in existence for a period of more than 10 years. These cells received a large number of price and classification lists over the years 1976-77 to 1981-82 but only a small proportion of them were checked. Further, the number of price and classification lists where undervaluation was noticed and the number of cases in which duty was recovered as a result of rectifications suggested by the Cells was quite negligible. This is borne out by the fact that during the 6 years from 1976-77 to 198 -82 a total number of 13, 37, 821 price and classification lists were sent to the Cells, about 6, 94, 117 lists were checked by them, mistakes were noticed in about 12, 775 lists and duty was recovered in approximately 618 cases in all. The Committee is distressed to see that the Valuation Cells are not taking up important cases and are not checking by making visits to monopoly houses and units selling to related persons etc. It is only engaged in routine checks duplicating work of internal audit.

Para 1 40

The classification and valuation cells in the various Collectorates are required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related person' and undervaluation of sale prices. The Committee find that during the last 5 years such study was conducted only in 6 Collectorates *viz* Bangalore, Baroda, Goa, Jaipur, Kanpur and Patna where as no studies were conducted in 17 Collectorates. No information has been furnished about the remaining 2 Collectorates.

This is a sad commentary on the working of the classification and valuation cells, majority of which have failed to discharge one of their most important functions of detecting cases of undervaluation of sale to "related person". The Committee cannot but express their deep concern at this.

The Committee would like to be apprised of the precise reasons which have prevented the cells in a large number of Collectorates from conducting any study during the last 5 years and the remedial measures taken in this regard".

1.9 In their Action Taken Note dated 30.3.84 the Ministry of Finance (Department of Revenue) have stated as follows :

"Reports received from the various Collectorates indicate that the type of study envisaged on the part of the Valuation Cell in the above paras, was conducted in certain other Collectorates as well, besides those mentioned in the above paras. For instance Collectorate of Central Excise, Madras has reported that during the years 1976-77 to 1980-81, the Valuation Cell of that Collectorate undertook the study of appointment of distributors/sole selling agents/sub-distributors/dealers *vis-a-vis* the concept of related person, as a result of which cases of duty evasion were made out in more than a dozen cases. The Cell also collected intelligence in respect of sizeable number of commodities during the years 1976-77 to 1981-82 and pointed out disparities in valuation on many occasions. The other Collectorates who have reported similar type of cases/study mentioned above are :

Allahabad, Chandigarh, Cochin, Madurai, Nagpur and Shillong.

Cochin Collectorate, for instance, has reported that during the year 1982 they had conducted a market survey to ascertain the wholesale and retail prices in respect of plywood, paints and varnishes, electric fans and transistor radios, etc. The valuation cell of that Collectorate also made a study in March, 1983, regarding the sale pattern of most of the units under the Collectorate's jurisdiction. Copies of contracts/agreements etc. relating to the concerned units were called for and scrutinised.

It is, however, generally reported that such studies could not be undertaken in a systematic manner for lack of proper resources. This should not detract from the facts that the Valuation Cells have been advising the field formations and Audit on points of valuation referred

to the cell. In addition by scrutiny of the price lists and classification lists themselves, the valuation cells were able to unearth sizeable amounts of duty evasion".

1.10 In their 158th Report, the Committee had pointed out that the Classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain varacity of prices in respect of important industries with sizeable volume of transactions, or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units was to be undertaken by visit to the factories by the Cell staff. The Committee had pointed out that although these Cells had been in existence for a period of more than 10 years they had checked only a small number of price/classification lists over the years 1976-77 to 1981 82, and the number of cases in which duty was recovered as a result of rectifications suggested by the Cells was quite negligible The Committee had pointed out that although mistakes were noticed in about 12,775 lists, duty was recovered in approximately 618 cases in all. The Committee had expressed distress over the fact that the Valuation Cells were not taking important cases and were not checking by making visits to monopoly houses and units selling to related persons etc. The reply of the Ministry is silent on the point as to why out of 12,775 lists in which mistakes were noticed, duty had been recovered in approximately 618 cases only. Nor does it indicate the steps taken by the Department to recover duty in the remaining cases. It is also silent about the steps taken by the Valuation Cells for taking up important cases and checking the lists by making visits to monopoly houses and units selling to related persons. The Committee desire that specific action taken in the above directions should be intimated to them within a period of three months.

1.11 The Committee had also pointed out that although Classification and Valuation Cells in the various Collectorates were required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related person' and undervaluation of sale prices, during the last 5 years, such studies were conducted only in 6 Collectorates. In their action taken note, the Ministry have stated that such studies were conducted in certain other Collectorates as well and the Valuation Cells have been advising the field formations and Audit on points of valuation referred

to the Cells. In addition, by scrutiny of the price lists and classification lists themselves the valuation cells were able to unearth sizeable amounts of duty evasion. However, it has been admitted that "such studies could not be undertaken in a systematic manner for lack of proper resources". The Committee are not convinced by the plea of 'lack of resources' for the failure of the Valuation Cell to conduct studies in a systematic manner. The Committee are sure that if the studies were conducted in a regular and systematic manner, it would have been possible for the Cells to detect a large number of cases of under-valuation of sales to 'related persons', and consequent evasion of excise duty. The Committee therefore, recommend that suitable methodology should be evolved so as to ensure that systematic and regular studies are conducted by the Valuation Cells of the various Collectorates according to well laid out schedules. The Committee desire that action taken in this regard may be intimated to the Committee within a period of 6 months.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Para 1.32

According to Section 4(1) (a) (iii) of the Central Excise and Salt Act, 1944 read with the rules made thereunder, the assessable value of goods, sale of which is arranged through a related person is required to be determined on the basis of the price charged by such related person to dealers. 'Related person' has been defined in sub-section 4 (c) as a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and distributor of the assessee and any sub-distributor of such distributor. In this clause, "holding company" "subsidiary company" and "relative" have the same meaning as in the Companies Act, 1956.

Para 1.33

Under notification No. 71/78CE dated 1 March, 1978, levy of duty on first clearance of specified goods upto an aggregate value not exceeding Rs. 5 lakhs made during a financial year by a manufacturer is exempt from excise duty subject to certain conditions. M/s Anand Rubber Industries, Mangalore cleared most of their goods manufactured by them to a sole selling agent M/s Swathi Enterprises, Mangalore. The manufacturer was allowed to avail the concession intended for small scale manufacturers under the said notification but the total clearance during the period from 1 April, 1978 to 31 March, 1979 valued Rs. 7,34,424. Accordingly, the licensee paid Central Excise duty on goods cleared in excess of the first clearance of Rs. 5 lakhs. The clearance during the period from 1 April, 1979 to 15 November, 1979, valued Rs. 3,71,950. The clearance through the sole selling agent formed 81.5 per cent and 94.74 per cent of the total production during the year 1978-79 and 1979-80 respectively. These clearances were assessed at the price at which the manufacturer sold the goods to the sole selling agent (related person) instead of at the price charged by that related person from dealers as per proviso (iii) to Section 4 (1) (a) of the Central Excises and Salt Act, 1944. The mistake in the determination of the assessable value resulted in short levy of duty to the tune of Rs. 3.75 lakhs.

On the mistake being pointed out in audit, necessary demand was raised and confirmed on 9 November, 1981. Subsequently the Appellate Collector of Central Excise set aside the order of 9th November, 1981 because the Department had not led in any evidence to show that M/s Swathi Enterprises were related person within the meaning of Section 4.

[S. Nos. 1 & 2—Paras 1.32 & 1.33 of 158th Report of PAC (7th L.S.)]

Action Taken

No Action Taken Note required as these paras are simply narrative.

[M/o Finance Department of Revenue O.M. 2 No. 234/12/CX7 dt. 30-3-84]

Recommendation

The Committee further observe that in the revenue proceedings initiated by the Collector of Central Excise, Pune in June 1980, it was decided that the distributors are "related persons". The assessee is stated to have gone in a writ petition to the Bombay High Court and obtained a stay order. The Ministry's note is silent on the point whether the Government has moved to get the stay vacated. Apparently this has not been done. As more than 2½ years have since elapsed, the Committee consider that the Department should have given a precise reply about the position in the case. They cannot but deprecate this lapse. They desire that the High Court should be moved immediately in the matter.

[S. No. 6 Para 1.37 of 158th Report PAC (7th L.S.)]

Action Taken

The assessee filed the writ in the High Court of Bombay in May 1982 and the interim stay orders were passed by the High Court on 24 May, 1982. This issue was also before the Supreme Court and the final decision was given by the Supreme Court in May, 1983 followed by a detailed judgement in October, 1983. The extracts from the judgement relating to this aspect is enclosed (Annexure 'A'). The decision of the Bombay High Court would be in accordance with the principles settled in the Supreme Court judgement supra.

M/o. Finance Department of Revenue O.M. 2 No. 234/12 CX-7 dt. 30-3-84]

10

Recommendation

The case underscores the need for having a separate Directorate in the Central Board of Customs and Central Excise to monitor all court cases so as to ensure that huge amounts of revenue do not remain locked up in such cases for unduly long time. The Committee would like the Ministry of Finance to consider this matter very seriously. The Committee would like to be apprised of the decision taken in this regard.

[S. No. 7 Para 1.38 of 158th Report of PAC (7th L.S.)]

Action Taken

In this case attention is invited to the Ministry's Action Taken Notes on para 1.3 of the 71st Report of the Public Accounts Committee. The legal Cell as proposed earlier, to monitor all court cases has already been formed in the Central Board of Excise and Customs.

M/o. Finance Department of Revenue O.M.F. No. 234/12/83 CX-7 dt. 30-3-84]

Recommendation

One of the other functions assigned to the classification and valuation cells is the collection of intelligence in respect of various commodities where wide disparity in prices of goods is found. During a period of 5 years from 1976-77 to 1981-82, such intelligence was collected only in 7 Collectorates in respect of a total of 153 commodities out of which wide disparity in prices was found in 59. As a result, additional duty of only about Rs. 15 lakhs was realised from 18 licensees only. The Committee feel that if intelligence is collected systematically in all the Collectorates and covering extended to all excisable commodities, leakage of revenue could be effectively curbed. The Committee would therefore like to know the reasons for the non-collection of intelligence in majority of the Collectorates and the action taken by Government to ensure that this work becomes the regular feature of the activities of all the Collectorates.

[S No. 10 para 1.41 of 158th Repot PAC (7th LS.)]

Action Taken

As already explained by the Ministry there are institutional arrangements for collection of intelligence like Preventive Intelligence units at the Headquarters of the Collectorates and other field formations, in addition to the

apex Preventive Organisation namely Directorate of Anti-Evasion. Valuation Cells also independently collect marketing intelligence in respect of commodities where under-valuation or evasion of duty is suspected.

[M/o. Finance (Department Revenue) O.M.F. No. 234/12/83 CX-7 dt. 30-3-84]

Recommendation

The Committee note that at present there is no foolproof system to ensure that the valuation cells examine the commercial accounts of the major manufacturers to ensure that these accounts truly reflect values and prices declared to excise authorities. The Ministry agrees that the classification and valuation cells should as and when necessary also look into the commercial accounts of major manufacturers. The Committee recommend that a regular system in this regard should be introduced early.

It is matter of common knowledge that a large number of manufacturers are passing on goods to their relations for sale on agency basis thereby avoiding excise duty. The Committee therefore desire that the matter should be examined systematically and regularly by Competent Officers entrused wholly with such task so as to detect such cases and initiate deterrent penal action. The Committee would like to be apprised of the action taken in this regard.

[S. No 11 para 1.42 of 158th Report of PAC (7th LS.)]

Action Taken

As regards para 1.42 provisions has already been made in the Central Excise Rules, 1944, vide rule 173-G (5) to enable the Central Excise Officers to inspect the commercial accounts of the assessee. The Central Excise Audit manual has also in the guidelines issued for the effective functioning of the Internal Audit parties, prescribed to checking of private records of the units, (Para 12) and co-relating the same with the excise records to ensure that no information or data is concealed or suppressed. Relevant extracts of Para 12 of Central Excise Audit Manual are enclosed.

[M/o. Finance (Department of Revenue) O.M.F. No. 234/12/83 CX-7 dt. 30-3-84]

ANNEXURE

In order that there is no lacuna in accountability, the audit party should indicate in its report the actual percentage of the checks of various documents, carried out by it.

(i) A preliminary on-the-spot study of the Balance-Sheet of the company for the last three years and of the annual speeches made by the Chairman of the Company before the share holders, may shed light on the production and sales achievements/trends of the factory.

(ii) It will also be useful to see the list furnished by the assessee of the private records maintained and returns submitted by him to other Departments/Agencies of the Government in order to locate any particular records/returns for special scrutiny.

(iii) An attempt should also be made to find out whether the assessee has made any efforts to conceal any records from the Department, while furnishing the list under Rule 173 G (5)

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

The provision of "Related person" in Sec. 4 was primarily intended to ensure that the sale price to the related person was determined by the manufacturing costs and manufacturing profits and not by extra commercial considerations. The main objective of the provision was to protect the interest of exchequer against under valuation. It is also to be borne in mind that a sole selling agency does not *ipso facto* become a related person until under-valuation in sale price can be established to show association involving interest. The Committee were informed that the firm had filed 10 price lists effective from 1st October, 1975 onwards and the same were reviewed on four occasions when no case of undervaluation was detected by the classification and Valuation Cells.

From the circumstances of the case it would appear that despite the clarifications issued by the Department from time to time the term "related person" continues to be interpreted differently by different authorities within the Department. The Committee would like the Ministry to examine the matter in depth and issue further guidelines, if necessary to obviate such embarrassing situations.

[S. No. 8 Para 1.34 of 158th Report of PAC (7th L.S.)]

Action Taken

The scope of the term "related person" has been examined in the recent judgement of the Supreme Court in the case of Union of India Vs. Bombay Tyre International Ltd. etc. The relevant extracts of the judgement dealing with the subject are enclosed (Annexure 'A').

[M/O. Finance (Department of Revenue) O.M.F. No. 234/12/CX 7 dt. 30.3.84]

ANNEXURE 'A'

On a proper interpretation of the definition of 'related person' in sub-section (4) (c) of Section 4, the word "a relative and a distributor of the assessee" do not refer to any distributor but they are limited only to a distributor who is a relative of the assessee within the meaning of the Commpanies Act, 1956. So read the definition of 'related person' is not unduly wide and does not suffer from any constitutional infirmity. It is within the legislative competence of Parliament. It is only when an assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through such a related person that the price at which the goods are ordinarily sold by the related person in the course of wholesale trade at the time of removal to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail is liable to be taken as the excisable value of the goods under proviso (iii) to sub-section (1) (a) of section 4.

Recommendation

The Committee understand that an assessee is required to file price list in the prescribed proforma once every year at the commencement of each financial year or at the close of the accounting year followed by the assessee, irrespective of whether or not there is any change in the price list furnished by him previously. The proper officer is supposed to cross-check the price list so received with the information in the previous price-list of the assessee and other relevant material and then approve the assessable value or values for the excisable goods of the assessee. The pattern of sales in the case of M/s Kirloskar Oil Engines, Pune, came, up for examination in September, 1975, November, 1975 and April, 1978. The dates when the price lists were submitted by them and the reasons for non-examination of the pattern of sales for a period of about 2½ years from November, 1975 and April 1978 have not been intimated to the Committee, in the absence of which it has not been possible for the Committee to arrive at any conclusion. The Committee would like to be furnished with this information and also whether there was any lapse on the part of the Department to obtain price lists on the due dates from the said firm and if so, the reasons therefore.

[S. No. 5-Para 1.36 of 158th Report of PAC (7th L.S)]

Action Taken

The information called for in the above para has since been obtained from the concerned Collectorate. The price lists were submitted in this case on different occasions as mentioned in Annexure 'B'. The manufacturer namely M/s. Kirloskar Engines Ltd. had an agreement effective from 1975 with M/s Escorts Ltd. by which M/s Escorts Ltd. were appointed as one of the distributors and the manufacturer was free to sell their engines directly to other customers. The concerned officer examined the price list and also the information furnished by the assessees and held that the sales effected through the distributor were at arms length in the course of ordinary business and as such the proper officer held that the distributors are not related persons. Further the proper officer also allowed 15% discount as claimed by the assessee as it was felt to be the normal trade discount. In view of this finding, the proper officer could not agree with the Audit objections raised by the CERA in 1977.

However, the issue was re-examined in the Collectorate Headquarters Office and since the Collector did not agree with the findings of the Divisional Officer, review proceedings were initiated in June, 1980.

In the light of the above facts it may not be correct to say that the issue raised by the Audit was not examined during the period November, 1975 to April 1978.

[M/O Finance (Department of Revenue) O.M.F. No 234/12/CX-7 dt. 30.3.84]

ANNEXURE 'B'

Sl. No.	P.L. Part No.	With effect from	Tariff item No.
1.	Part VII	1.10.1975	29
2.	Part VI	—do—	29(ii)
3.	Part V	—do—	29 (i)
4.	Part IV	—do—	29
5.	Part III	—do—	29(ii)
6.	Part II	—do—	29(ii)
7.	Part I	(seven Nos) —do—	29(ii)
8.	Part I	—do—	29 (i)
9.	Part II	29.5.76	29 (i)
10.	Part I	1.2.76	29 (i) & (ii)
11.	Part II	14.7.1976	—do—
12.	Part VI	1.8.1977	29 (i)
13.	Part-I	—do—	—do—
14.	Part I	15.11.77	29(ii)
15.	Part-I	15.12.77	29(ii)
16.	Part I	13.12.77	29(ii)
17.	Part-I	1. 1.78	29(ii)
18	Part I	1. 1.78	29 (i)
19.	Part-I	1. 9.78	29(ii) & (i)

Nil price lists have been filled in respect of part VII and Part VI.

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The Committee are surprised to find that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in August, 1975 and 4 March, 1977 on valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises and Salt Act, 1944. To a pointed query by the Committee whether the Board was kept apprised by the Internal Audit Wing or Directorate of Inspection and Audit in regard to the interpretation of the aforesaid clarifications, the Committee have been furnished with a vague reply that "ordinarily the clarifications issued by the Board are to be kept in view by the field officers and that the Internal Audit Parties of the Collectorates are expected in the course of inspection of excisable units *inter alia* to look into whether the various instructions/clarifications issued by the Government or the Board are being correctly applied by the Range staff." "Even though the clarifications issued are quite exhaustive and detailed the Committee consider it necessary that the Board develops a system of obtaining regular feed back from the field so that the law is applied uniformly in all the Collectorates and it is ensured that the provisions of law with regard to "related person" are effectively utilised to bring to book cases of undervaluation. The Committee would like to be apprised of the steps taken by the Board in this regard.

[S. No. 4—Para 1.35 of 158th Report of PAC (7th L.S.)]

Action Taken

As already explained in reply to Point 8 (d) of advance information on Audit Para 2.63/80-81, it is the duty of the Internal Audit Parties during Inspection of excisable units *tnter alia* to look into whether various instructions/clarifications issued by the Govt. or the Board are being applied by the Range Staff.

Some of such important objections relating to non-compliance with Board's clarifications are also included in the All India Audit Bulletin issued by the Directorate of Audit each quarter so that all formations are suitably alerted.

[M/o Finance Deptt. Revenue O.M.F. No. 234/12/83-CXM Dt. 30.3.84]

Recommendation

Para 1.39

The Committee find that the classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain varacity of prices in respect of important industries with sizeable volume of transactions, or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units will be undertaken by visit to the factories by the Cell staff. These cells have now been in existence for a period of more than 10 years. These cells received a large number of price and classification lists over the years 1976-77 to 1981-82 but only a small proportion of them were checked. Further, the number of price and classification lists were undervaluation was noticed and the number of cases in which duty was recovered as a result of rectifications suggested by the Cells was quite negligible. This is borne out by the fact that during the 6 years from 1976 77 to 1981-82 a total number of 13,37,821 price and classification lists were sent to the Cells, about 6,94,117 lists were checked by them. Mistakes were noticed in about 12,775 lists and duty was recovered in approximately 618 cases in all The Committee is distressed to see that the Valuation Cells are not taking up important cases and are not checking by making visits to monopoly houses and units selling to related persons etc. It is only engaged in routine checks duplicating work of internal audit.

Para 1.40

The classification and valuation cells in the various Collectorates are required to study *inter alia* the procedures in regard to appointment of sole sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related person' and undervaluation of sale prices. The Committee find that during the last 5 years Such study was conducted only in 6 Collectorates *viz* Bangalore, Baroda, Goa, Jaipur, Kanpur, and Patna where as no studies were conducted in 17 Collectorates. No information has been furnished about the remaining 2 Collectora-tes.

This is a sad commentary on the working of the classification and valuation cells, majority of which have failed to discharge one of their most important functions of detecting cases of undervaluation of sale to "related person". The Committee cannot be but express their deep concern at this.

The Committee would like to be apprised of the precise reasons which have prevented the cells in a large number of Collectorates from conducting any study during the last 5 years and the remedial measures taken in this regard.

[S. No. 8 & 9, Para 1.39 and 1.40 of 158th Report of the PAC (7th L.S)]

Action Taken

Paras 1.39 and 1.40

Reports received from the various Collectorates indicate that the type of study envisaged on the part of the Valuation Cell in the above paras, was conducted in certain other Collectorates as wall, besides those mentioned in the above paras. For instance Collectorate of Central Excise, Madras has reported that during the year 1976-77 to 1980-81, the Valuation Cell of that Collectorate undertook the study of appointment of distributors/sole selling agents/sub-distributors/dealers *vis-a-vis* the concept of related person, as a result of which cases of duty evasion were made out in more than a dozen cases. The Cell also collected intelligence in respect of sizeable number of commodities during the years 1976-77 to 1981-82 and pointed out disparities in valuation on many occasions.

The other Collectorates who have reported similar type of cases/study mentioned above are :—

Allahabad, Chandigarh, Cochin, Madurai, Nagpur and Shillong.

Cochin Collectorate, for instance, has reported that during the year 1982 they had conducted a market survey to ascertain the wholesale and retail prices in respect of plywood, paints and varnishes, electric fans and transistor radios, etc. The valuation cell of that Collectorate also made a study in March, 1983, regarding the sale pattern of most of the units under the Collectorate's jurisdiction. Copies of contracts/agreements etc. relating to the concerned units were called for and scrutinised.

It is, however, generally reported that such studies could not be undertaken in a systematic manner for lack of proper resources. This should not

detract from the facts that the Valuation Cells have been advising the field formations and Audit on points of valuation referred to the cell. In addition by scrutiny of the price lists and classification lists themselves, the valuation cells were able to unearthed sizeable amounts of duty evasion.

[M/o Finance Deptt. of Revenue O.M.F. No. 234/12/CX-7 dt. 30.3.84]

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

It is a matter of common knowledge that a large number of manufacturers are passing on goods to their relations for sale on agency basis, thereby avoiding excise duty. The Committee therefore desire that the matter should be examined systematically and regularly by Competent Officers entrusted wholly with such task so as to detect such cases and initiate deterrent penal action. The Committee would like to be apprised of the action taken in this regard.

[S. No. 12—Para 1.43 of 158th Report of PAC (7th L S.)]

Action Taken

The matter is under examination.

[M/o. Finance Deptt of Revenue O.M.F. No. 234/12/83—CX-7 dt. 30-3-84]

New Delhi
August 13, 1984
Sravana 22, 1906(s)

SUNIL MAITRA
Chairman
Public Accounts Committee

PART II

MINUTES OF THE ELEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1984-85) HELD ON 7 AUGUST, 1984.

The Public Accounts Committee sat from 1500 hours to 1730 hours on 7 August, 1984 in Committee Room No. 62, First Floor, Parliament House, New Delhi. The following were present :—

Shri Sunil Maitra—*Chairman*

Members

2. Shri G.L. Dogra
3. Shri Bhiku Ram Jain
4 Shri Uttam Rathod
5. Shri Suraj Bhan
6. Shri Ram Singh Yadav
7. Shri Bhim Raj
8. Shri Nirmal Chatterjee
9. Dr. (Shrimati) Najma Heptulla
10. Shri Ramanand Yadav

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri S. Sethuraman, ADAI(R)
2. Shri F.P. Gugnani, ADAI (Railways)
3. Shri M. Parthasarthi, DADS
4. Shri Shiv Subramaniam, DRA-II
5. Shri S.P. Joshi, DAP & T
6. Shri O P. Goel, DACR
7. Shri R. Balasubramaniam
8. Shri Gopal Singh, JDAP & T
9. Shri N.R. Rayalu, JD (Defence)
10. Shri A.C. Das, JD (R)
11. Shri G.R. Sood, JD (R-P & T)
12. Shri K.H. Chhaya, JD(Rlys.)
13. Shri R.S. Gupta, JDA
14. Shri S.K. Gupta, JD

SECRETARIAT

1. Shri H.S. Kohli — *Chief Financial Committee Officer.*
2. Shri K.K. Sharma — *Senior Financial Committee Officer.*
3. Shri V. Jayaraman — *Senior Financial Committee Officer.*

2. × × × × × × × × × × × ×

3. The Committee also considered the following Draft Action Taken Reports and adopted the same without any modifications/amendments :

1. Draft Action Taken Report on 158th Report of PAC (7th Lok Sabha) relating to Union Excise Duties—Related Person.

2. × × × × × × × × × × × ×

4. × × × × × × × × × × × ×

5. The Committee also authorised the Chairman to finalise the Reports after incorporating therein certain minor modifications/amendments arising out of factual verifications by Audit and present the same to Parliament.

The Committee then adjourned.

APPENDIX

Conclusions/Recommendations

S. No.	Para	Ministry/ Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	1.3.	M/o. Finance Deptt. of Revenue	In para 1.43 of their 158th Report, the Committee had observed that it was a matter of common knowledge that a large number of manufacturers were passing on goods to their relations for sale on agency basis, thereby avoiding excise duty. The Committee had therefore, desired that the matter should be examined systematically and regularly by competent officers entrusted wholly with such task so as to defect such cases and initiate deterrent penal action. In their action taken reply submitted in March, 1984, the Ministry have simply stated "the matter is under examination". The Committee are unhappy at this vague reply of the Ministry. It is surprising that it has not been possible for the Ministry to examine the matter and take concrete steps in pursuance of the recommendation of the Committee even though a period of nearly a year and a quarter has elapsed since the Committee had presented their Report to the House. The Committee desire that the matter should be examined with utmost expedition and the precise action taken in pursuance of their recommendation intimated to them within a period of three months.
2	1.7.	M/o. Finarce Deptt. of Revenue	In their earlier Report, the Committee had pointed out that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in

1	2	3	4
			August 1975 and 4 March 1977 on valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises & Salt Act, 1944. The Committee had recommended that the Board should develop a system whereby regular feed-back is obtained from the field so that the law is applied uniformly in all the Collectorates to ensure that the provisions of law with regard to "related person" are effectively utilised to bring to book cases of undervaluation. In their Action Taken Note the Ministry have not furnished any details of action taken in pursuance of the Committee's recommendation but have only repeated their earlier reply "that it is the duty of the Internal Audit Parties during inspection of excisable units *inter alia* to look into whether various instructions/clarifications are applied by the Range Staff". The Committee are not satisfied with this reply. It is apparant that the existing procedure has not enabled the Board to oversee that the clarifications issued by them are applied uniformly by all the Collectorates and it was in this context that the Committee had desired the Board to develop a system whereby regular feedback was obtained from the field so that the law was applied uniformly by all the Collectorates. The Committee would, like the Central Board of Excise and Customs to indicate precise action taken in this regard.
3	1.10.	M/o Finance Deptt. of Revenue	In their 158th Report, the Committee had pointed out that the Classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain varacity of prices in respect of important industries with sizeable volume of transactions or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units was to be undertaken by visit to the factories by the Cell staff. The Committee had pointed out that although these Cells had been in existence for a period of more than 10 years they had checked only a small number of price classification lists

1	2	3	4
			over the years 1976-77 to 1981-82, and the number of cases in which duty was recovered as a result of rectifications suggested by the Cells was quite negligible The Committee had pointed out that although mistakes were noticed in about 12,775 lists, duty was recovered in approximately 618 cases in all. The Committee had expressed distress over the fact that the Valuation Cells were not taking important cases and were not checking by making visits to monopoly houses and units selling to related persons etc. The reply of the Ministry is silent on the point as to why out of 12,775 lists in which mistakes were noticed, duty had been recovered in approximately 618 cases only. Nor does it indicate the steps taken by the Department to recover duty in the remaining cases It is also silent about the steps taken by the Valuation Cells for taking up important cases and checking the lists by making visits to monopoly houses and units selling to related persons. The Committee desire that specific action taken in the above directions should be intimated to them within a period of three months.
4	1.11	M/o. Finance (Deptt. of Revenue)	The Committee had also pointed out that although Classification and Valuation Cells in the various Collectorates were required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related person' and undervaluation of sale prices, during the last 5 years, such studies were conducted only in 6 Collectorates. In their action taken note, the Ministry have stated that such studies were conducted in certain other Collectorates as well and that the Valuation Cells have been advising the field formations and Audit on points of valuation referred to the Cells In addition, by scrutiny of the price lists and classification lists themselves the valuation cells were able to unearth sizeable amounts of duty evasion. However, it has been admi-

1	2	3	4
			tted that "such studies could not be undertaken in a systematic manner for lack of proper resources". The Committee are not convinced by the plea of 'lack of resources' for the failure of the Valuation Cell to conduct studies in a systematic manner. The Committee are sure that if the studies were conducted in a regular and systematic manner, it would have been possible for the Cells to detect a large number, of cases of undervaluation of sales to 'related persons', and the consequent evasion of excise duty. The Committee therefore, recommend that suitable methodology should be evolved so as to ensure that systematic and regular studies are conducted by the Valuation Cells of the various Collectorates according to well laid out schedules The Committee desire that action taken in this regard may be intimated to the Committee within a period of 6 months.

P.A.C. No. 1038

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